

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/FLN)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

REX HARTZEL,

Plaintiff,

Civil Action No.: 16-CV-01338-JNE-FLN

**DECLARATION OF DONALD C. GREEN II IN SUPPORT OF
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

I, Donald C. Green II, declare as follows:

1. I am an attorney at Kennedy Hodges, LLP and Counsel for Plaintiff Rex Hartzel in the above-captioned matter.
2. I submit this affidavit in opposition to Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 filed on August 3, 2017.
3. Mr. Hartzel contacted Kennedy Hodges, LLP in May of 2015 regarding injuries that were allegedly caused by the Bair Hugger patient warming device.
4. Medical records and billing records pertaining to Mr. Hartzel's treatment were obtained by Kennedy Hodges through its third party medical records retrieval company. Those records demonstrate use of a Bair Hugger device during his original orthopedic surgery.

5. This case was filed on May 18, 2016 to comply with the statute of limitations deadline.
6. Mr. Hartzel was initially cooperative with efforts to complete the Plaintiff Fact Sheet, and showed every intention of complying with the Court's requirements. However, we were subsequently unable to get in contact with him to obtain the information needed to submit a substantially complete Plaintiff Fact Sheet.
7. After our last contact with Mr. Hartzel on November 30, 2016, numerous phone calls have been placed to Mr. Hartzel by staff at Kennedy Hodges in an attempt to reach him and obtain information for the Plaintiff Fact Sheet. These calls have gone unanswered, and voice messages left with Mr. Hartzel were not returned.
8. Additionally, several letters have been sent to Mr. Hartzel since our last contact with him advising that his case would be subject to dismissal if he did not contact our office and provide the information necessary to submit a substantially complete Plaintiff Fact Sheet.
9. In an attempt to locate Mr. Hartzel, an Accurant background search was performed on February 28, 2017. This resulted in no new contact information available for Mr. Hartzel, and indicated no change in status (such as recently deceased).
10. Based on information and belief, Mr. Hartzel has not made any attempt to contact Kennedy Hodges in response to these phone calls and letters to provide the information necessary to complete the Plaintiff Fact Sheet.
11. As we have been unable to obtain the additional information necessary to complete the Plaintiff Fact Sheet for this claim, we have not been able to cure the alleged

deficiencies pertaining to the Plaintiff Fact Sheet that has been submitted for this case.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

August 10, 2017

/s/ Donald C. Green II
Donald C. Green II